

APOLOGY FOR RADIO REMARKS

Mr. D'AMATO. Mr. President, two mornings ago I gave a radio interview on the Imus talk show program.

I am here on the Senate floor to give a statement as it relates to that episode.

It was a sorry episode.

Mr. President, as an Italian-American, I have a special responsibility to be sensitive to ethnic stereotyping. I fully recognize the insensitivity of my remarks about Judge Ito. My remarks were totally wrong and inappropriate. I know better. What I did was a poor attempt at humor. I am deeply sorry for the pain I have caused Judge Ito and others. I offer my sincere apologies.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as if in morning business for 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPORT OF THE BUREAU OF JUSTICE STATISTICS ON TORT CASE FILINGS

Mr. GRASSLEY. Mr. President, today I want to discuss a Bureau of Justice Statistics special report that is supposed to be released in the very near future. I am very disturbed about what I consider to be the political manipulation of a Government report.

This draft report concerns tort cases in State courts. One of the so-called findings of what is, undoubtedly, a flawed report, is that tort case filings have remained steady and that there is no tort litigation explosion.

I believe this document by the Bureau of Justice Statistics was clearly prepared for political reasons. This is underscored by the fact that the study conveniently omits any study of the cost of torts; it omits all Federal liability suits; and it is a scientifically flawed telephone-based survey on only a fraction of the counties in the United States. In addition, the report does not even address many of the important issues regarding tort reform.

Included in this report are some of the results from a study of tort cases in State courts. The study claims that the basis of this report is a representative sampling of the courts in which half of all tort cases nationwide are adjudicated. I disagree with that, Mr. President.

First of all, the report only involves 16 States and a total of 75 counties out of our more than 3,000 counties, but there is nothing scientific about their selection. They are simply the 75 most

populous counties, and even if they were selected randomly, the results would not have been much better. Filings are not random occurrences; the number of filings in any set of counties cannot possibly represent anything but the counties that are being surveyed.

Worse, this study does not even involve the use of the most rudimentary sampling techniques. It relies on only the 75 largest counties and further stratified them so that only samples of the data in some of the counties were used.

After reading over this study, you will find that there is a lack of rational sampling methodology in selecting which counties would be used. There is absolutely no evidence contained in this Bureau of Justice Statistics special report that the counties selected are in any way representative of the entire United States.

However, once the counties were selected, only a few of those were used to select various kinds of data. The counties were divided into four strata, although it is not clear how the strata were defined. In the first strata, all 14 counties were selected for the first stage of the study; in the second strata, only 12 of 15; in the third, only 10 of 20; and in the fourth, only 9 of 26. In the second phase, the study relied on interval or random samples. It seems unusual to use more than one sampling method as they have here.

In this study, it reads:

Contrary to the belief that there has been an explosion of tort litigation, tort case filings have remained stable since 1986 according to multi-State data.

Now, there is no rational way to identify whether there has been an explosion in tort filings or not from this study, since the data is limited to 1990 for the first phase of the study and for a 1-year period from mid-1991 to mid-1992. It should also be pointed out that the study was based on phone interviews in only 45 of the 75 largest counties.

Now, to determine whether there was an explosion in tort filings, it seems to me that you would need to start with data at least as far back as 1970, or maybe as late as 1980, and run a longitudinal analysis to see what happened. The study simply declares out of thin air that "multi-State data" since 1986 proves that there has not been any such explosion. Another concern I had was the fact that no financial data of any kind was shown anywhere in the report. Let me stress that again. In this whole study of tort liability explosion, there is no financial data of any kind involved in the report.

This means that there is no way to identify the most important of all indicators. The report simply omits any discussion of whether the size of tort awards had changed over the years.

Because there are no financial data, there is no way to see if venue shopping is real or not. For example, we know that awards in certain counties in Texas are extreme. However, you would not know that from this report.

The report also conveniently fails to provide any information on the effect of large tort awards on settlements. In other words, one could ask, are settlements made more often now without regard to the merits of the case because of the threat of an expensive suit? This study does not answer that question, and it does not do it, of course, because it also conveniently failed to include any data on award amounts.

Lastly, this report does not limit itself to the torts with which we are most concerned, those that affect products, like product liability, those that affect premises liability and medical malpractice. It does not include any of those. Instead, it includes auto torts, which make up more than 60 percent of all tort cases considered. This seems to make every other tort look minor, even though auto torts are very common. Generally, they are very quickly settled and, generally, they involve only one or two parties and relatively small amounts of money. By adding auto torts, the average time for the disposition of all torts falls to about 19 months, whereas the auto torts average less than 17 months.

Yet, all other torts average more like 2 years, involve more parties and they involve much larger amounts of money.

These are just a few of the criticisms that can be leveled at this flawed and ill-conceived report. But the more telling criticism has to do with the timing of its release. I am concerned about the possible political manipulation behind the report. We all know that President Clinton, and one of the most powerful special-interest supporters, the Trial Lawyers Association, opposes tort reform. Apparently, the original plan was to have the report out before the House considered tort reform. The goal now seems to be to release it before the Senate takes up tort reform. The Bureau of Justice Statistics claims the study has been in the system for several years. If this is so and they, indeed, had several years to compile this study, why is it so limited and so conveniently timed?

I strongly believe that this document by the Bureau of Justice Statistics was clearly prepared for political reasons. Once again, this is underscored by the fact that the study conveniently omits any study of the cost of tort, no study of the cost of torts. It omits all Federal liability suits and is a scientifically flawed telephone-based survey of only a fraction of the counties in the United States.

In addition, the report does not address the real issues, such as what effect do large awards have on settlements, and is there extensive venue shopping for those counties which consistently make the most outrageous awards?

You could hypothesize about the answers to these questions. That is why

our civil justice system is in need of reform, and studies like this, I think, cloud the issue. If this report comes out as written, the Justice Department should be embarrassed, the people in the Bureau of Justice Statistics should be ashamed that they allowed themselves to be used for political purposes, and I hope the Justice Department will try to reestablish some credibility and integrity by refusing to release this report or at least require it to meet minimum scientific standards.

I also hope and even challenge the media to look into this matter and shine some light on the political maneuvering that is going on over at the Justice Department.

The Assistant Attorney General, or Associate Attorney General, Mr. Schmidt, will be briefed on this tomorrow. He has an opportunity to make sure this study, if it is going to be used as a basis, is done in a more scientific and intellectually honest way and, most importantly, it seems to me, since this study has been supposedly going on for a long period of time, that we do not let it come out at just about this time that the Senate is going to discuss the issue of tort reform.

There has to be the integrity of an agency, as the Justice Department, particularly under this Attorney General, seems to have a great deal of independence and integrity, to make sure that there is not this sort of manipulation that is going to undercut the principal approach to running the Department that our Attorney General has assumed.

I hope that my speaking at this point will encourage another look-see at this report, and I hope that the report that I have seen will not be the one that comes out. I think there are plenty of checks and balances within our system to see that it does not, and I hope those checks and balances will work in this instance. I yield the floor.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT

The Senate continued with the consideration of the bill.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, last night, the majority leader and I announced that we had a tentative agreement with regard to the pending legislation. We had hoped that as a result of our negotiations, which have been conducted in good faith on both sides, it would lead, hopefully, to an opportunity to come to some closure in the not-too-distant future on this important matter.

Unfortunately, as a result of differences on both sides of the aisle with regard to the agreement, amendments are likely which would significantly alter the result of the negotiations that have been ongoing.

As a result, the real prospect that the agreement could be successfully con-

cluded in debate on the floor this afternoon becomes increasingly unlikely. I am disappointed because I feel it was an effort made on the part of many Senators—Republicans and Democrats—to bridge our differences to accomplish what we all want.

The amendment that I have had pending has now been pending for a week. Unfortunately, we have not had the opportunity during these negotiations to vote on it or on any other Democratic amendment. We have been hopeful that over the course of the last several days, we could have come to some conclusion about the agreement or about at least a time limit relating to the amendments, and come to some conclusion this week in one way or the other. That now does not look possible.

But the fact is, because we have not been given an opportunity to have votes on these amendments, we will come to the cloture vote this afternoon not having had one vote on one Democratic amendment. As a result, I urge my colleagues to protect our right to offer these amendments. I urge my colleagues to recall how important it is that the amendments that we have offered over the course of the last couple of weeks dealing directly with the concerns that have been raised on this floor now for more than 7 days, that we have the opportunity to have good debates about those issues prior to the time we come to closure on this vote.

As I have said on several occasions, we really have three goals here:

The first goal is to ensure the Federal Emergency Management Administration is adequately funded.

The second goal is to ensure that we provide the necessary deficit reduction that this rescissions package will allow, and we are now at a point of \$15 billion in the total deficit reduction package.

And the third goal was one that all of us on this side of the aisle feel especially strongly about.

That is, if we are going to do it, we should do it right. If we are going to do it, we should ensure that we do not eat the seed corn. We should ensure that as we remember our priorities, we remember our kids and working families who are struggling to ensure that they can be productive citizens in this country.

Those are the three goals. Our whole effort, the amendment that we have pending, is designed to accomplish those three goals. Without that amendment, unfortunately, all we do is accomplish the first two goals. We provide adequate funding for FEMA. We provide for necessary deficit reduction, but we do it at the expense of kids. We do it at the expense of people who are counting on these investments so they can be the productive, working people that they want to be.

That is what this debate was about. So this cloture vote is very important. It is a cloture vote that will allow Members the opportunity to accomplish all three goals. Without defeating cloture we will not have that protection.

I want to emphasize as loudly and as plainly as I possibly can, our desire is not to hold up this bill. Our hope is that we do not have to hold up this bill. Our hope is that before we leave here, Democrats and Republicans can come to time agreements on amendments. We will have up-or-down votes on the amendments that are proposed on this side and do so in a way that will allow Members to get our business accomplished.

We will finish, we will have final passage, and we can all go home satisfied, however the votes may fall. We only hope we will be given the opportunity to have up-or-down votes on these issues because that is critical to the degree of enthusiasm, the degree of support that we ultimately will have for the bill itself.

I think it is very clear that for a lot of different reasons, we have not been given a right today to offer those amendments, and it is equally as clear that, unless we block cloture this afternoon, we will not have that right after 2 o'clock today.

So, Mr. President, I come to the floor to express regret. In good faith we have not been able to accomplish what I sincerely had hoped we could accomplish. Having said that, we now must accomplish what our original intent was, which was try to protect all three goals as we move toward final passage of this legislation.

I urge my colleagues to weigh carefully their decision on this cloture motion. I hope that we can defeat it, not in the interest of extending debate, not in the interest of prolonging this issue any longer than we have to, but in the interest of accomplishing the three goals and protecting our rights to offer amendments and improve legislation as these occasions arise.

So, Mr. President, to accommodate my colleagues who have amendments to the bill, it is important at this point, from a parliamentary procedure motion only, to withdraw my amendment to allow others to offer the amendments that they will so offer. I will certainly come back at a later time and describe, as we intend to, the importance of the amendments that will make in the composite what our amendment was originally designed to do as it was laid down last Friday. We will do that at a date or at a time later, perhaps today.

AMENDMENT NO. 445 WITHDRAWN

Mr. DASCHLE. Mr. President, at this time I withdraw my amendment.

I yield the floor.

The PRESIDING OFFICER. The minority leader has that right. Amendment No. 445 is withdrawn.

The amendment (No. 445) was withdrawn.

The PRESIDING OFFICER. As a result, the second-degree amendment No. 446, which was pending thereto, falls.